

Case 1:19-cv-00073-MAC-CLS Document 50 Filed 08/01/24 Page 1 of 2 PageID #: 189

EASTERN DISTRICT OF TEXAS

ROBERT BYRD,

Plaintiff,

versus

DYNETTE JOHNSON, *et al.*,

Defendants.

CIVIL ACTION NO. 1:19-CV-73

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Robert Byrd, an inmate confined at the Alred Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled civil rights lawsuit against Dynette Johnson and Karmyn Leal. Plaintiff alleges the defendants, who are nurses, were deliberately indifferent to his serious medical needs.

The court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that an amended motion to dismiss filed by the defendants be granted.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

The magistrate judge concluded plaintiff's allegations failed to demonstrate the defendants were aware he was subject to a substantial risk of serious harm. In his objections, plaintiff states the defendants were aware he was suffering from back pain and that he filed sick call requests describing the nature of his pain. However, plaintiff does not state either defendant saw his sick call requests. Instead, he states the defendants were told to schedule him for another medical

appointment because he was suffering from back pain.¹ Knowledge that plaintiff was experiencing back pain was insufficient to make the defendants aware plaintiff was subject to a substantial risk of serious harm.

Plaintiff also states the defendants were reprimanded because they failed to schedule him for a new appointment within the time limit provided for in prison regulations. Even assuming this statement is true, the magistrate judge correctly stated that the failure to follow prison regulations does not give rise to a constitutional violation. *Samford v. Dretke*, 562 F.3d 674, 681 (5th Cir. 2009).

ORDER

Accordingly, the objections filed by plaintiff in this matter (#48) are **OVERRULED**. The findings of fact and conclusions of law set forth in the report of the magistrate judge (#47) are correct, and the report of the magistrate judge is **ADOPTED**. The amended motion to dismiss (#29) is **GRANTED**. A final judgment shall be entered in accordance with the recommendation of the magistrate judge.

SIGNED at Beaumont, Texas, this 1st day of August, 2024.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

¹ Plaintiff had missed prior medical appointments because security officers were not available to escort him to the infirmary.